Ketua Polis Negara v Abdul Ghani Haroon

FEDERAL COURT (KUALA LUMPUR) — CRIMINAL APPLICATIONS NO 07–1 OF 2001(B) AND 07–2 OF 2001(B)
STEVE SHIM CJ (SABAH & SARAWAK), ABDUL MALEK AHMAD AND HAIDAR FCJJ
6 AUGUST 2001

Constitutional Law *— Fundamental liberties — Preventive detention — Right to be present at hearing of habeas corpus proceedings — Applicants arrested under s 73(1) of Internal Security Act 1960 — Judge below held constitutional right of applicants to be present at hearing of their habeas corpus applications by virtue of art 5(2) of Federal Constitution — Whether judge correct in ruling on applicants' constitutional right to be present at hearing of habeas corpus applications — Federal Constitution art 5(2) — Internal Security Act 1960 s 73(1)*

The applicants, officers of a political party, were arrested separately on 10 and 11 April 2001 under s 73(1) of the Internal Security Act 1960 ('the ISA'). The High Court, Shah Alam, served on the respondent a 'notice to produce' the applicants in respect of their habeas corpus proceedings. The respondent did not comply with the order, being of the view that the applicants had no right to be present at the hearing of their applications. The judge took it upon himself to decide the preliminary issue of whether, in law, the applicants had the legal right to be present at the hearing of their applications. The judge ruled that by virtue of art 5(2) of the Federal Constitution ('the Constitution'), it was implicit that the right to apply to the High Court for a writ of habeas corpus was not merely a legal right but also a constitutional right available to any person who believed that he had been unlawfully detained. It followed that the right being a constitutional right, a detainee had every right to be present in court at the hearing of his habeas corpus application. The issue in this appeal was whether the judge at the High Court, Shah Alam, was right in ruling that the applicants had the constitutional right to be present at the hearing of their habeas corpus applications.

Held, allowing the appeals:

(1) The construction to be given to art 5(2) of the Constitution had to be interpreted and applied according to the wording of the Constitution as a whole and its meaning had to be found by legal reasoning. The wording in art 5(2) of the Constitution, given their natural and ordinary meaning, seemed to show clearly that the High Court or any judge should order a detainee to be produced in court and release him after being satisfied that the detention was unlawful. In other words, art 5(2) of the Constitution did not envisage the production of a detainee at the hearing of his habeas corpus application (see p 17D–E).

(2) A detainee's constitutional right had to be considered in the context of the relevant law applicable to the detainee. In this case,

the applicants were arrested under s 73(1) of the ISA. The so-called constitutional right to be present in court in respect of habeas corpus proceedings challenging the arrest made under the ISA is a limited one, as detention under the ISA is a preventive detention, where a person is detained without trial, as opposed to a criminal prosecution, the object of which is to punish a person for an offence committed by him (see pp 17G, H–18A). In the present case, the arrest of the applicants under s 73(1) of the ISA was the prelude to an order under s 8 of the ISA by the Minister. It was at the investigation stage. There would not have been any possible punishment for an alleged offence in the court against the applicants (see p 18E).

(3) Even in a s 8 of the ISA situation, the right of a detained person to be present at the habeas corpus proceeding was not a constitutional right but at the discretion of the court and, hence, the judge's ruling that it was the constitutional right of the applicants to be present at their habeas corpus proceedings for an arrest under s 73(1) of the ISA could not be supported (see p 19A); *Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v Lim Guan Eng* [1989] 1 MLJ 420 followed.

(4) Apart from the constitutional right point, even if the judge had been minded to exercise his judicial discretion for the production of the applicants, on the record, there was no sufficient material before him to exercise such a discretion (see p 19G–H).

[Bahasa Malaysia summary

Pemohon-pemohon, pegawai-pegawai satu parti politik, telah ditangkap secara berasingan pada 10 dan 11 April 2001 di bawah s 73(1) Akta Keselamatan Dalam Negeri 1960 ('AKDN'). Mahkamah Tinggi, Shah Alam, telah menyampaikan ke atas responden satu 'notis untuk mengemukakan' pemohon-pemohon berhubung prosiding habeas corpus mereka. Responden tidak mematuhi perintah tersebut, kerana berpendapat bahawa pemohon-pemohon tidak mempunyai hak untuk menghadirkan diri di perbicaraan permohonan-permohonan mereka. Hakim dengan sendirinya membuat keputusan tentang persoalan penting sama ada, mengikut undang-undang, pemohon-pemohon mempunyai hak di sisi undang-undang untuk hadir di perbicaraan permohonan-permohonan mereka. Hakim telah memerintahkan bahawa menurut perkara 5(2) Perlembagaan Persekutuan (Perlembagaan tersebut'), adalah tersirat bahawa hak untuk memohon ke Mahkamah Tinggi untuk satu writ habeas corpus bukan hanya satu hak di sisi undang-undang tetapi juga satu hak perlembagaan yang sedia ada kepada sesiapa yang mempercayai bahawa beliau telah ditahan secara tidak sah. Ini diikuti bahawa hak tersebut yang merupakan satu hak perlembagaan, seorang yang ditahan mempunyai hak sepenuhnya untuk hadir di mahkamah semasa perbicaraan permohonan habeas

corpus beliau. Persoalan dalam rayuan ini adalah sama ada hakim di Mahkamah Tinggi, Shah Alam, telah dengan betul memerintahkan bahawa pemohon-pemohon tersebut mempunyai hak perlembagaan untuk hadir di perbicaraan permohonan-permohonan habeas corpus mereka.

Diputuskan, membenarkan rayuan tersebut:

(1) Perkataan-perkataan yang diberikan kepada perkara 5(2) Perlembagaan tersebut perlu ditafsirkan dan diterapkan menurut susunan perkataan Perlembagaan tersebut secara menyeluruh dan maksudnya perlu berdasarkan pertimbangan di sisi undang-undang. Susunan kata dalam perkara 5(2) Perlembagaan tersebut, berdasarkan maksud asal dan biasanya, kelihatan menunjukkan dengan jelas bahawa Mahkamah Tinggi atau mana-mana hakim sepatutnya memerintahkan seorang yang ditahan untuk dikemukakan ke mahkamah dan membebaskan beliau selepas berpuas hati bahawa penahanan tersebut tidak sah di sisi-undang-undang. Dalam erti kata lain, perkara 5(2) Perlembagaan tersebut tidak membayangkan pengemukaan seorang yang ditahan di perbicaraan permohonan habeas corpus beliau (lihat ms 17D–E).

(2) Hak perlembagaan seorang yang ditahan perlu dipertimbangkan dalam konteks undang-undang berkaitan yang terpakai kepada beliau. Dalam kes ini, pemohon-pemohon telah ditangkap di bawah s 73(1) AKDN. Hak perlembagaan yang dikatakan untuk hadir di mahkamah berhubung prosiding habeas corpus untuk mencabar penangkapan yang dibuat di bawah AKDN adalah suatu yang terhad, kerana penahanan di bawah AKDN adalah satu penahanan pencegahan, di mana seseorang ditahan tanpa perbicaraan, berbeza dengan pendakwaan jenayah, yang bertujuan untuk menghukum seseorang kerana kesalahan yang telah dilakukan oleh beliau (lihat ms 17G, H–18A). Dalam kes sekarang ini, penangkapan pemohon-pemohon di bawah s 73(1) AKDN merupakan permulaan satu perintah di bawah s 8 AKDN oleh Menteri. Ia adalah di peringkat siasatan. Tidak mungkin terdapat apa-apa hukuman untuk satu kesalahan yang didakwa di mahkamah terhadap pemohon-pemohon (lihat ms 18E).

(3) Walaupun dalam keadaan s 8 AKDN, hak seorang yang ditahan untuk hadir di prosiding habeas corpus bukan satu hak perlembagaan tetapi adalah atas budi bicara mahkamah dan, oleh demikian, perintah hakim bahawa ia adalah hak perlembagaan pemohon-pemohon untuk hadir di prosiding habeas corpus mereka untuk satu tangkapan di bawah s 73(1) AKDN tidak boleh disokong (lihat ms 19A); *Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v Lim Guan Eng* [1989] 1 MLJ 420 diikut.

(4) Selain daripada perkara mengenai hak perlembagaan, walaupun hakim cenderung untuk menggunakan budi bicara beliau untuk

pengemukaan pemohon-pemohon tersebut, di atas rekod, tidak terdapat bahan yang mencukupi di hadapan beliau untuk menggunakan budi bicara sedemikian (lihat ms 19G–H).] A

Notes

For cases on fundamental liberties applicable in preventive detention cases, see 3(1) *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1592–1612. B

Cases referred to

Attorney General of the Commonwealth, ex relatione Me Kinley v The Commonwealth of Australia (1975) 135 CLR 7 (refd) C

Dewan Undangan Negeri Kelantan v Nordin bin Salleh & Anor [1992] 1 MLJ 697 (refd)

Greene, Re (1941) 57 TLR 533 (refd)

Kanu Sanyal v District Magistrate, Darjeeling & Ors AIR 1973 SC 2684 (refd) D

Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187 (folld)

Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v Lim Guan Eng [1989] 1 MLJ 420 (folld)

Minister of Home Affairs v Fisher [1980] AC 319 (refd)

Minister of Home Affairs &Anor v Karpal Singh (No 2) [1988] 3 MLJ 85 (refd) E

Tan Sri Raja Khalid bin Raja Harun, Re; Inspector General of Police v Tan Sri Raja Khalid bin Raja Harun [1988] 1 MLJ 182 (folld)

Legislation referred to F

Criminal Procedure Code ss 365(a), 366, 367, 374
Federal Constitution arts 5(2), 9, 10
Internal Security Act 1960 ss 8, 73(1)
Internal Security (Detained Persons) Rules 1960 r 93(1)

Abdul Ghani Patail (*Mohd Yusof Zainal Abiden* and *Abd Karim Abd Jalil* with him) (Senior Federal Counsels, Attorney General's Chambers) for the appellant. G

Sulaiman Abdullah (*R Sivarasa, Malik Imtiaz, Kamarul Hisham Kamaruddin* and *P Kandasamy* with him) (*Selvam Shanmugam & Partners*) for the respondent.

H

Haidar JCA. (delivering judgment of the court): The issue in this appeal is whether the learned judge at the High Court, Shah Alam, was right in ruling on 4 May 2001 that Abdul Ghani bin Haroon and Gobalakrishnan a/l Nagappan ('the applicants') had the constitutional right to be present at the hearing of their habeas corpus applications ('applications') vide Nos 44–9–2001 and 44–10–2001 wherein he ordered for their production in court. The applications, by consent, were consolidated. The applications were supported by the affidavit of Pn Roslijah bte S Syed, the wife of Abdul I

Ghani, and the affidavit of Mr Deven a/l Nagappan, the brother of Gobalakrishnan. Ketua Polis Negara was cited as the respondent in their applications.

On 8 May 2001, an interim order of stay was granted by Abdul Malek Ahmad FCJ, against the orders of the learned judge on the criminal applications filed by the respondent pending an appeal by the respondent to the Federal Court pursuant to s 374 of the Criminal Procedure Code ('the CPC').

When the two criminal applications came up for hearing on 14 May 2001, it was agreed by the parties to treat both criminal applications as appeals. We agreed and after hearing both parties, we reserved our decision. On 16 May 2001, we allowed the appeals of the respondent and set aside the orders of the learned judge. As intimated, we now proceed to give our reasons.

Brief background

The applicants are officers of a political party, Parti Keadilan Nasional. They were arrested separately on 10 April 2001 and 11 April 2001 under s 73(1) of the Internal Security Act 1960 ('the ISA').

There was no formal application filed by the applicants for their presence at the hearing of their applications. The issue arose in this way.

According to the learned judge, the deputy registrar of the High Court caused to be issued and served on the respondent a 'notice to produce' the applicants in respect of their habeas corpus proceedings. It is, it seems, the normal practice of the Shah Alam High Court in all habeas corpus proceedings. In this case, the respondent did not comply with the order on the ground, according to the learned judge, that the respondent took the position that, in law, the applicants had no right to be present at the hearing of their applications. Unfortunately, the learned judge did not show or at least indicate the details of such cases of the practice of the Shah Alam High Court and that there had been compliance thereof by the respondent previously. If there had been compliance by the respondent previously, then why in this particular case should the respondent take a different stand? We were, therefore, not clear on the so-called practice. Be that as it may, in this case, the applicants contended that they had the legal right to be present.

The learned judge took it upon himself to decide the preliminary issue of whether, in law, the applicants have the legal right to be present at the hearing of their applications.

At the hearing of the appeal, the senior federal counsel informed us that counsel for the applicants conceded that the order of the learned judge was appealable under s 374 of the CPC. The concession by counsel could possibly be due to the judgment of the Supreme Court in *Minister of Home Affairs & Anor v Karpal Singh (No 2)* [1988] 3 MLJ 85, where it held that the words 'decision or direction' under s 374 of CPC must necessarily refer to the final decision or direction made under s 365 of the CPC. Looking at the facts of the case, we were of the view that the interpretation of s 374 of

the CPC was decided per curiam by the Supreme Court.

We proceeded to consider the preliminary issue decided by the learned judge.

Preliminary issue

The learned judge, in ordering the production of the applicants at the hearing of their applications, relied on art 5(2) of the Federal Constitution ('the Constitution'), which reads:

> Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

The learned judge ruled that by virtue of art 5(2) of the Constitution, it is implicit that the right to apply to the High Court for a writ of habeas corpus is not merely a legal right but also a constitutional right available to any person who believes that he has been unlawfully detained. It follows, according to the learned judge, that the right being a constitutional right, a detainee has every right to be present in court at the hearing of his habeas corpus application. He then posed the question — how else is a detained person to exercise his constitutional right under art 5(2) of the Constitution to the fullest if he is prevented from attending the court hearing of his habeas corpus application?

The learned judge based his ruling on the principle of interpretation that should be adopted in interpreting Constitutional provisions pertaining to fundamental rights, citing the case of *Minister of Home Affairs v Fisher* [1980] AC 319 as instructive. According to Lord Wilberforce, on behalf of the Privy Council, the Constitution of Bermuda, which guaranteed fundamental rights and freedom, should be given 'a generous interpretation, avoiding what has been called "the austerity of tabulated legalism," suitable to give to individuals the full measure of the fundamental liberties referred to.' The learned judge went on to state that the above principle was adopted by our Supreme Court in *Dewan Undangan Negeri Kelantan v Nordin bin Salleh & Anor* [1992] 1 MLJ 697, where Abdul Hamid Omar LP said at p 709:

> Secondly, as the judicial committee of the Privy Council held in *Minister of Home Affairs v Fisher* [1980] AC 319 at p 329, a constitution should be construed with less rigidity and more generosity than other statutes and as sui juris, calling for principles of interpretation of its own, suitable to its character but not forgetting that respect must be paid to the language which has been used … .

We agreed with what the learned judge stated as the approach to be adopted in interpreting the Constitution. In this context, it is also worth recalling what Barwick CJ of the High Court Australia said in *Attorney General of the Commonwealth, ex relatione Me Kinley v The Commonwealth of Australia* (1975) 135 CLR 7 at p 17:

> The only true guide and the only course which can produce stability in constitutional law is to read the language of the constitution itself, no doubt generously and not pedantically, but as a whole and to find its meaning by legal reasoning.

It is pertinent to note the observation of Raja Azlan Shah FJ (as His Highness then was) when considering the issue of whether the amendment to art 5(4) of the Constitution was constitutional in *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187 (at pp 188–189):

> Whatever may be said of other Constitutions, they are ultimately of little assistance to us because our Constitution now stands in its own right and it is in the end the wording of our Constitution itself that is to be interpreted and applied, and this wording 'can never be overridden by the extraneous principles of other Constitutions' — see *Adegbenro v Akintola & Anor* [1963] 3 All ER 544 at p 551. Each country frames its constitution according to its genius and for the good of its own society. We look at other Constitutions to learn from their experiences, and from a desire to see how their progress and well-being is ensured by their fundamental law.

At the end of the day, the construction to be given to art 5(2) of the Constitution will have to be interpreted and applied according to the wording of our Constitution as a whole and to find its meaning by legal reasoning.

Now, the wording in art 5(2) of the Constitution, given their natural and ordinary meaning, seem to show clearly that the High Court or any judge shall order a detainee to be produced in court and release him after being satisfied that the detention is unlawful. In other words, art 5(2) of the Constitution does not envisage the production of a detainee at the hearing of his habeas corpus application. The senior federal counsel took this approach in the interpretation of art 5(2) of the Constitution before the learned judge but, unfortunately, the learned judge took scant regard to the wording of art 5(2) of the Constitution and disagreed.

The learned judge ruled that a detainee has a constitutional right to be present in court for his habeas corpus application. However, the constitutional right will, in our view, have to be considered in the context of the relevant law applicable to a detainee. In this case, the applicants were arrested under s 73(1) of the ISA, a legislation enacted under art 149 of the Constitution. 'It is a legislation essentially to prevent and combat subversions and actions prejudicial to public order and national security. It is expressly provided in the constitution that such a law as the act is valid notwithstanding that it is inconsistent with art 5, 9 or 10 of the constitution dealing with fundamental liberties' — per Salleh Abas LP in *Re Tan Sri Raja Khalid bin Raja Harun; Inspector-General of Police v Tan Sri Raja Khalid bin Raja Harun* [1988] 1 MLJ 182 at p 185. To that extent, therefore, the so-called constitutional right to be present in court in respect of habeas corpus proceedings challenging the arrest made under the ISA is a limited one.

We say so as the detention under the ISA is a preventive detention, where a person is detained without trial. A criminal proceeding and

preventive detention are not parallel proceedings. The object of a criminal prosecution is to punish a person for an offence committed by him, while a preventive detention is an anticipatory measure and may not relate to an offence (see p 187 of *DD Basu's Shorter Constitution of India* (12th Ed, 1999)). Hence, the constitutional right to be present in habeas corpus proceedings is a limited one and the applicants here were not facing criminal charges.

While art 5(2) of the Constitution provides the constitutional or substantive right, the CPC provides the procedure of enforcing such right. It is provided by way of Ch XXXVI of the CPC under the caption 'Directions of the Nature of a Habeas Corpus'. Section 366 of the CPC provides for the application to be supported by way of affidavit. The affidavit can be made by the detamed person or by some other person on his behalf (s 367 of the CPC). As the proceedings are to be by way of affidavit evidence, it implies, therefore, that there would be no legal right for a detained person to be produced at the hearing of the habeas corpus proceeding, unless an order for his release is to be made as clearly provided by art 5(2) read with s 365(a) of the CPC. In other words, no oral evidence is required in the habeas corpus proceeding and the issue of the detainee being prejudiced would not arise. He had the benefit of counsel. It is a matter for the detainee to show that the detaining authority has no legal power to detain him.

In the matter before us, the arrest of the applicants under s 73(1) of the ISA is the prelude to an order under s 8 of the ISA by the Minister. It is at the investigation stage. There would not be any possible punishment for an alleged offence in the court against the applicants.

We are here dealing with an arrest under s 73(1) of the ISA and even in a challenge mounted against an order under s 8 of the ISA, the Supreme Court in *Minister for Home Affairs, Malaysia & Anor v Karpal Singh (No 2)* in construing r 93(1) of the Internal Security (Detained Persons) Rules 1960 ('the Rules') stated at p 86:

> We are of the view that r 93(1) on its proper construction cannot be invoked to secure the presence of a detainee in an7 criminal or civil court notwithstanding that it is the detainee's choice to argue his own case. The rule clearly envisages that the discretion should only be exercised in circumstances when the court itself requires the presence of the detainee, fo instance, where the court is satisfied that a detainee is a necessary witness to a criminal or civil matter before the court, or where it would occasion a failure of justice to deny the presence of a detainee to argue his own case. In the latter case, the court must be satisfied on an application by the detainee, that there are valid reasons for the detainee to be personally present to argue his own case. From this view, it follows tha prima facie the power to issue an order requiring the presenc of a detained person is discretionary and that being so it shall be exercised judicially.

It is true as stated by the learned judge that *Karpal Singh (No 2)* was concerned with the interpretation of r 93 of the Rules and not art 5(2) of the Constitution, but it is assistance, in our view, in reading and interpreting art 5(2) of the Constitution. We have to bear in mind that even

in a s 8 of the ISA situation, the right of a detained person to be present at the habeas corpus proceeding is not a constitutional right but at the discretion of the court and, hence, for the learned judge to rule as being the constitutional right of the applicants to be present at their habeas corpus proceedings for an arrest under s 73(1) of the ISA could not be supported. Section 73 of the ISA cannot be divorced from s 8 of the ISA. This is what Salleh Abas LP said in *Tan Sri Raja Khalid bin Raja Harun* at p 186:

> The arrest and detention under s 73(1) is pending inquiries to see if an order under s 8 should be made be the Minister. It is clear from the language of the two sections that s 73 provides for the initial detention and cannot be divorced from s 8 of the Act which provides for the fina detention.

In another case similar as *Karpal Singh (No 2)*, the detained person applied for an order from the High Court for his appearance at his habeas corpus proceeding by urging the court to invoke r 93(1) of the Rules. The High Court, in spite of being aware of the Supreme Court case of *Karpal Singh (No 2)* and also *Re Greene* (1941) 57 TLR 533 referred therein, allowed the application and, on appeal, the Supreme Court set aside the order. The case is *Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v Lim Guan Eng* [1989] 1 MLJ 420, where it was held that the principle is that where the issue of a writ of habeas corpus is sought, it is not the practice to allow the presence of the person detained. We could not possibly disagree with what was said by the Supreme Court.

By way of persuasive authority, we refer to the Indian Supreme Court case of *Kanu Sanyal v District Magistrate, Darjeeling & Ors* AIR 1973 SC 2684. It is a case dealing with habeas corpus where in considering the need of a detained person to be produced in court at the time when issuing an order of his release, Bhagwati J also dealt with whether there was the need of the detained person to be produced at the hearing itself (at p 2689):

> The inquiry into the legality of the detention can be made and the person illegally detained can be effectively set free without requiring him to be produced before the court. Why then should it be necessary that the body of the person alleged to be wrongfully detained must be produced before the court before an application for a writ ofhabeas corpus can be decided by the court? Would it not mean blind adherence to form at the expense of substance?

We respectfully agree with what was expressed by Bhagwati J.

Quite apart from the constitutional right point, even if the learned judge were minded to exercise his judicial discretion for the production of the applicants, with respect, on the record there was no sufficient material before him to exercise such a discretion.

We do appreciate the learned judge's concern, as the guardian of justice, on the constitutional right of a detained person, especially under the ISA, a legislation that is presently the focus of public debate and concern, but we have to be clear on the functions of the court. In this respect, suffice for us to quote what Raja Azlan Shah FJ (as His Highness then was) said in *Loh Kooi Choon v Government of Malaysia* at p 188:

It is clear that the question at issue is fraught with political controversy. No doubt the appellant and other persons holding strong views one way or the other on the justice of the impugned Act. I should add that right now no feature of our system of government has caused so much discussion, received so much criticism, and been so frequently misunderstood, than the duties assigned to the courts and the functions which they discharge in guarding the constitution. For that reason and also because it is rarely that this court is faced with a constitutional question of this kind it is desirable at the outset to make clear the functions of the courts. The question whether the impugned Act is 'harsh and unjus' is a question of policy to be debated and decided by Parliament, and therefore not meet for judicial determination. To sustain it would cut very deeply into the very being of Parliament. Our courts ought not to enter this political thicket, even in such a worthwhile cause as the fundamental rights guaranteed by the constitution, for as was said by Lord Macnaghten in *Vacher and Sons Ltd v London Society of Compositors* (1913) AC 107 at p 118:

> 'Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature.'

It is the province of the courts to expound the law and 'the law must be taken to be as laid down by the courts, however much their decisions may be criticised by writers of such great distinction' — per Roskill LJ in *Henry v Geopresco International Ltd* [1975] 2 All ER 702 at p 718. Those who find fault with the wisdom of the impugned Act, and with vexatious interference of fundamental rights, normally must address themselves to the legislature, and not the courts; they have their remedy at the ballot box.

For the reasons stated, the learned judge, in our view, erred in interpreting art 5(2) of the Constitution in relation to actions under the ISA as giving a constitutional right to the applicants to be present at their habeas corpus proceedings. We accordingly allowed the appeals and set aside the orders of the learned judge.

Appeals allowed.

Reported by Anita Teo